



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R05-OAR-2018-0588; FRL-9984-57-Region 5]

**Air Plan Approval; Minnesota; Commercial and Industrial Solid
Waste Incineration Units and Other Solid Waste Incineration
Units Negative Declarations for Designated Facilities and
Pollutants**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is notifying the public that we have received negative declarations from Minnesota pertaining to the presence of Commercial and Industrial Solid Waste Incineration (CISWI) units and Other Solid Waste Incineration (OSWI) units in Minnesota. The Minnesota Pollution Control Agency (MPCA) submitted its CISWI negative declaration by letter dated February 3, 2017, and its OSWI negative declaration by letter dated June 21, 2017. MPCA notified EPA in its negative declaration letters that there are no CISWI or OSWI units subject to the requirements of the Clean Air Act (Act) currently operating in Minnesota.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**,

ADDRESSES: Submit your comments, identified by Docket ID No.

EPA-R05-OAR-2018-0588, at <http://www.regulations.gov> or via email to cain.alexis@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Margaret Sieffert,
Environmental Engineer, Environmental Protection Agency,
Region 5, 77 West Jackson Boulevard (AT-18J), Chicago, Illinois
60604, (312) 353-1151, sieffert.margaret@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
 - A. Sections 111 and 129 of the Act
 - B. Commercial and Industrial Solid Waste Incineration Units
 - C. Other Solid Waste Incineration Units
- II. Negative Declarations and EPA Analysis
 - A. Commercial and Industrial Solid Waste Incineration Units
 - B. Other Solid Waste Incineration Units
- III. Proposed EPA Action
- IV. Statutory and Executive Order Reviews

I. Background

A. Sections 111 and 129 of the Act

Sections 111 and 129 of the Act set forth EPA's statutory authority for regulating new and existing solid waste incineration units. Section 111(b) directs EPA to publish and periodically revise a list of categories of stationary sources which cause or significantly contribute to air pollution, and to establish new source performance standards (NSPS) within these categories. Section 111(d) grants EPA statutory authority to require states to submit to the agency implementation plans for establishing performance standards applicable to existing sources belonging to those categories established in section

111(b).

Section 111(d) of the Act requires states to submit plans to control certain pollutants (designated pollutants) at existing facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of a source category and EPA has established emission guidelines (EGs) for designated facilities. 40 CFR 60.21(a) and (b). Section 129 of the Act is specific to solid waste combustion, and requires EPA to establish performance standards pursuant to section 111 of the Act for each category of solid waste incineration units, which includes the categories addressed in today's action.

The regulations at 40 CFR part 60, subpart B, contain general provisions applicable to the adoption and submittal of state plans for the control of designated pollutants from designated facilities under section 111(d) of the Act, including those pollutants and facilities designated pursuant to section 129 of the Act. Further, 40 CFR part 62, subpart A, provides the procedural framework by which EPA will approve or disapprove such plans submitted by a state. If a state fails to submit a satisfactory plan, the Act provides EPA with the authority to prescribe a plan for regulating the designated pollutants at the designated facilities. The EPA prescribed plan, also known as a Federal plan, is used to regulate designated facilities when

there is no EPA approved state-specific plan. Further, if there are no designated facilities within a state's jurisdiction, the state may submit to EPA a letter of certification to that effect (referred to as a "negative declaration") in lieu of a state plan to satisfy the state's obligation. 40 CFR 60.23(b) and 62.06. The negative declaration exempts the state from the requirement to submit a state plan for the designated pollutants and facilities. Therefore, if a state submits a negative declaration for a category of solid waste incineration units, the state is not required to submit a state plan for that source category.

B. Commercial and Industrial Solid Waste Incineration Units

On December 1, 2000, EPA promulgated new source performance standards for new CISWI units, 40 CFR part 60, subpart CCCC, and EGs for existing CISWI units, 40 CFR part 60, subpart DDDD. 65 FR 75338. On March 21, 2011, EPA, after voluntarily remanding the 2000 CISWI standards and EGs, promulgated final CISWI standards and EGs. 76 FR 15704. Correspondingly, on the same date, EPA promulgated a final rule under the Resource Conservation and Recovery Act (RCRA) to identify which non-hazardous secondary materials, when used as fuels or ingredients in combustion units, are "solid wastes." 76 FR 15456; see 40 CFR part 241, Solid Wastes Used as Fuels or Ingredients in Combustion Units (also known as the "Non-Hazardous Secondary

Material Rule"). The identification of solid waste in the Non-Hazardous Secondary Material Rule is used to determine whether a combustion unit is required to meet the emissions standards for solid waste incineration units issued under sections 111 and 129 of the Act, or meet the emissions standards for commercial, industrial, and institutional boilers issued under section 112 of the Act. EPA subsequently promulgated amendments to both rules on February 7, 2013: Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Final Amendments; Non-Hazardous Secondary Materials That Are Solid Waste; Final Rule. 78 FR 9112. Reconsideration of certain aspects of the final CISWI rule resulted in minor amendments. 81 FR 40956 (June 23, 2016). Pursuant to sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B, states were required to revise their state plans for existing CISWI units to comply with the amended regulations.

A CISWI unit is defined in 40 CFR 60.2875 as any distinct operating unit of any commercial or industrial facility that combusts, or has combusted in the preceding 6 months, any solid waste, as the term "solid waste" is defined in the Non-Hazardous Secondary Material Rule. A state plan must address all existing CISWI units that commenced construction on or before June 4, 2010, or for which modification or reconstruction was commenced on or before August 7, 2013, with limited exceptions as provided

in 40 CFR 60.2555. 40 CFR 60.2550.

However, as discussed above, if there are no existing designated facilities in a state, the state may submit a negative declaration in lieu of a state plan. EPA will provide public notice of receipt of a state's negative declaration with respect to that solid waste incineration unit category. 40 CFR 60.2530. If any unit of a solid waste incineration category is subsequently identified in a state for which a negative declaration had been submitted, the Federal plan implementing the EGs for that source category would apply to that unit. In the case of a CISWI unit, subpart DDDD would automatically apply to that CISWI unit until a state plan is approved. 40 CFR 60.2530.

C. Other Solid Waste Incineration Units

EPA promulgated new source performance standards and EGs for OSWIs on December 16, 2005. 70 FR 74870. The standards and EGs are codified at 40 CFR part 60, subparts EEEE and FFFF, respectively. Thus, states were required to submit plans for existing OSWIs pursuant to sections 111(d) and 129 of the Act and 40 CFR part 60, subpart B.

An OSWI unit is defined in 40 CFR 60.3078 as a very small municipal waste combustor and institutional waste incinerator. The designated facilities to which the original EGs applied to are existing OSWI units that commenced construction on or before

December 9, 2004.

II. Negative Declarations and EPA Analysis

A. Commercial and Industrial Solid Waste Incineration Units

On February 3, 2017, MPCA submitted its CISWI negative declaration, in which MPCA certified that there are no existing CISWI units currently operating in Minnesota. Two non-waste determinations under the Non-Hazardous Secondary Materials Rule were critical elements of MPCA's February 3, 2017 negative declaration letter. Specifically, on September 25, 2015, in response to a petition to Region 5, the Regional Administrator made a non-waste determination under the Non-Hazardous Secondary Materials Rule provision at 40 CFR 241.3(c), with regard to the poultry litter burned as fuel in the boiler at the Benson Power, LLC power plant in Benson, Minnesota. The Regional Administrator determined that the poultry litter at issue was not a solid waste. Further, by letter dated October 15, 2015, ReConserve of Minnesota Inc., d/b/a Endres Processing, Rosemount, Minnesota, certified to Region 5 that it had made a non-waste self-determination under the Non-Hazardous Secondary Materials Rule provision at 40 CFR 241.3(b), with regard to the refuse derived fuel that it processes, as defined at 40 CFR 241.2, and which meets the legitimacy criteria for fuels at 40 CFR 241.3(d)(1), that the refuse derived fuel is not a solid waste.

Correspondingly, by technical review document dated February 23,

2018, Region 5's Land and Chemicals Division reviewed and confirmed the non-waste self-determination. EPA's Office of Resource Conservation and Recovery correspondingly concurred with the Region's review and conclusion.

B. Other Solid Waste Incineration Units

On June 21, 2017, MPCA submitted its OSWI negative declaration, in which it certified that there are no existing OSWI units currently operating in Minnesota.

III. Proposed EPA Action

EPA is notifying the public of EPA's receipt of MPCA's negative declarations for both CISWI and OSWI facilities and that EPA is amending 40 CFR part 62 to reflect both negative declarations. For CISWI, EPA received the negative declaration on February 3, 2017, and for OSWI, EPA received the negative declaration on June 21, 2017.

IV. Statutory and Executive Order Reviews

General Requirements

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and therefore is not subject to review by the Office of Management and Budget under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011). For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use" (66 FR 28355, May 22, 2001). This action is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because this action is not significant under E.O. 12866. This action merely approves state law as meeting Federal requirements and merely notifies the public of EPA's receipt of negative declarations from an air pollution control agency without any existing CISWI or OSWI units in its state. This action imposes no requirements beyond those imposed by the state. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule pertains to pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This rule is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it

does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely provides notice of receipt of negative declarations, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it just notifying the public regarding receipt of the negative declarations.

In reviewing state plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. With regard to negative declarations for designated facilities received by EPA from states, EPA's role is to notify the public of the receipt of such negative declarations and revise 40 CFR part 62 accordingly. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state plan submission or negative declaration for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state plan or negative declaration submission, to use VCS in place of a state plan or negative declaration submission that otherwise satisfies the

provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Commercial and industrial solid waste incinerators, Intergovernmental relations, Other solid waste incinerator units, Reporting and recordkeeping requirements.

Dated: September 13, 2018.

Cathy Stepp,
Regional Administrator, Region 5.